

BEFORE THE
U. S. DEPARTMENT OF TRANSPORTATION
Washington, D.C.

DEPARTMENT OF TRANSPORTATION
1990 JUN 11 PM 4:42
DOCKET SECTION

In the matter of)

DISCOVERY AIRWAYS, INC.)

for a certificate of public)
convenience and necessity issued)
under Section 401(d) of the)
Federal Aviation Act of 1958,)
as amended.)

DOCKET 46393

In the matter of)

DISCOVERY AIRWAYS, INC. and)
MR. PHILIP Y. HO)

DOCKET 46760 ✓

THE UNIONS' CONTINGENT REPLY TO THE ANSWER OF
PHILIP HO TO PETITION FOR RECONSIDERATION
AND
MOTION FOR LEAVE TO FILE

Communications with respect
to this document should be
served on:

Nancy Segal
Guerrieri, Edmond & James
Suite 300
1150 17th St., N.W.
Washington, D.C. 20036
(202) 296-7002

Russell Bailey
Air Line Pilots Association
1625 Massachusetts Ave., NW
Washington, D.C. 20036
(202) 797-4086

Mark D. Schneider
Asst. General Counsel
International Assn. of
Machinists
1300 Connecticut Ave., N.W.
(202) 328-5400
Washington, D.C. 20036

Deborah Greenfield
Association of Flight
Attendants
1625 Massachusetts Ave., NW
Washington, D.C. 20036

June 11, 1990

**BEFORE THE
U. S. DEPARTMENT OF TRANSPORTATION
Washington, D.C.**

In the matter of)	
)	
DISCOVERY AIRWAYS, INC.)	
)	DOCKET 46393
for a certificate of public)	
convenience and necessity issued)	
under Section 401(d) of the)	
Federal Aviation Act of 1958,)	
as amended.)	

In the matter of)	
)	
DISCOVERY AIRWAYS, INC. and)	DOCKET 46760
MR. PHILIP Y. HO)	

**THE UNIONS' CONTINGENT REPLY TO THE ANSWER
OF PHILIP HO TO PETITION FOR RECONSIDERATION
AND
MOTION FOR LEAVE TO FILE**

On June 8, 1990, Philip Ho submitted an unauthorized Answer to Discovery Airways' Petition for Reconsideration of Order 90-3-48. If that Answer is accepted for filing by the Department, the Union parties to this proceeding, the International Association of Machinists and Aerospace Workers, the Air Line Pilots Association, and the Association of Flight Attendants, respectfully request leave to file this Reply thereto.

The stated purpose of Mr. Ho's latest filing is to "advise

the Department" that he has decided "to dispose of substantially all of his voting interest in Discovery."¹ Mr. Ho contends that this decision on his part "eliminates totally the 'Ho/Nansay' foreign control issue" from this case, and therefore should cause the Department either to cancel or at least postpone "for several weeks" the hearing in this case.

Even if everything Mr. Ho says is true, we fail to see what it has to do with Discovery's Petition for Reconsideration of Order 90-3-48, or how it obviates the need for a hearing in this case. Order 90-3-48 "expand[ed] the scope of the issues in the proceeding in Docket 46760 to include the issue of Discovery Airways' compliance disposition." Mr. Ho's proposed sale of his investment in Discovery neither affects Discovery's compliance disposition nor obviates the Department's reasons for ordering a full hearing on that issue.

As Mr. Ho's filing itself indicates, the sale of his stock could only affect the other issue in this proceeding, which Mr. Ho calls "the Ho/Nansay foreign control issue." That issue is entirely separate from the issue of compliance disposition, and was made the subject of this hearing by the Department's earlier Orders 89-12-41 and 90-1-60, before the question of compliance

¹ Mr. Ho's pleading is not entirely clear as to precisely how he intends to "dispose of" his "voting interest." We assume he is talking about an outright sale of at least 75% of his shares in the company.

disposition was raised. Thus, even if Mr. Ho were correct that his proposed stock sale eliminates the need for a hearing on the "Ho/Nansay foreign control issue," the compliance disposition issue would still remain to be considered.

Nor would the sale of Mr. Ho's stock eliminate the need to inquire into the circumstances surrounding his original investment. There is substantial evidence to indicate that Mr. Ho never intended to make, and did not make, a bona fide personal investment in Discovery; that his purported personal investment was simply a sham designed to give a false appearance of U.S. citizen control of the carrier. This issue would have to be explored as part of the issue of compliance disposition even if Mr. Ho were now to dispose of his interest in Discovery.

Moreover, Mr. Ho's announced unilateral decision to sell does not necessarily mean that a sale will actually take place. Mr. Ho could change his mind again or, perhaps more importantly, he could fail to find a buyer for his investment. The founders of Discovery spent approximately a year seeking investors for their company before they found Nansay and Mr. Ho, and that was before the carrier was burdened by its present legal and financial difficulties. It is therefore entirely possible that, under present circumstances, Mr. Ho will be unable to sell his stock at all, despite his announced desire to do so. And it is certainly unreasonable to expect that any such sale will take

place in the space of just a few weeks.

But even if a sale of Mr. Ho's stock were to take place, and even if that sale eliminated the need for a hearing on the "Ho/Nansay foreign control issue," a full examination of the compliance disposition issue would still be required, including an examination of the nature and circumstances of Mr. Ho's original investment. Therefore, the mere announcement of Mr. Ho's intention to sell his stock is certainly no reason to cancel or delay the hearing in this case.

Respectfully submitted,

Nancy Segal (JA)
Nancy Segal, Esq.
Guerrieri, Edmond & James
Suite 300
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 296-7002

Russell Bailey, Esq.
Jerry Anker, Esq.
Air Line Pilots Association
1625 Massachusetts Ave., NW
Washington, D.C. 20036
(202) 797-4086

Mark D. Schneider (JA)
Mark D. Schneider, Esq.
Assistant General Counsel
International Association of
Machinists
1300 Connecticut Avenue N.W.
Washington, D.C. 20036

Deborah Greenfield (JA)
Deborah Greenfield, Esq.
Ben Elliott, Esq.
Association of Flight
Attendants
1625 Massachusetts Ave. N.W.
Washington, D.C. 20036
202) 328-5400

June 11, 1990

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 1990 I caused a copy of the foregoing Reply to the Answer of Philip Ho to Petition for Reconsideration and Motion for leave to file to be served by hand delivery or first-class mail on each of the following individuals:

BY HAND:

Honorable Ronnie A. Yoder
Administrative Law Judge
Office of Hearings
Department of Transportation
400 Seventh Street, S.W.
Room 8228
Washington, D.C. 20590

Kenneth G. Caplan, Esq.
Deputy Asst. General Counsel
Office of Aviation Enforcement
& Proceedings
Department of Transportation
400 Seventh Street, S.W.
Room 4116
Washington, D.C. 20590

BY FIRST CLASS MAIL

Marshall S. Sinick, Esq.
Edward W. Sauer, Esq.
Scott T. Kragie, Esq.
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Suite 500
Washington, D.C. 20044

Jonathan B. Hill, Esq.
Don H. Hainbach, Esq.
Eileen M. Gleimer, Esq.
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20036

Joseph Guerrieri, Jr., Esq.
Robert S. Clayman, Esq.
Nancy E. Segal, Esq.
Guerrieri, Edmond & James
1150 17th Street, N.W.
Suite 300
Washington, D.C. 20036

Frank J. Costello, Esq.
Zuckert, Scoutt & Rasenberger
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Nathaniel P. Breed, Jr., Esq.
Shaw Pittman, Potts &
Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Deborah Greenfield, Esq.
Ben C. Elliott
Edward J. Gilmartin
Association of Flight
Attendants
1625 Massachusetts Ave., NW
Washington, D.C. 20036

William C. Evans
Verner, Liipfert, Bernhard,
McPherson & Hand
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

A. Maurice Myers
President and CEO
Aloha Airlines, Inc.
Post Office Box 30028
Honolulu, Hawaii 96820

Darryl H.W. Johnston, Esq.
Cades Schutte Fleming &
Wright
1000 Bishop St., 10th Fl.
Honolulu, Hawaii 96813

Albert P. Wells
Exec. V.P. & COO
Hawaiian Airlines, Inc.
Post Office Box 30008
Honolulu, Hawaii 96820

Don E. Straight
President
Discovery Airways, Inc.
90 Nakolo Place
Honolulu, Hawaii 96819



Jerry Anker

June 11, 1990